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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,683	10/23/2003	William L. Lewis	521300/00001A	6632

7590

10/01/2004

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EXAMINER
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HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/691,683	<b>Applicant(s)</b> LEWIS, WILLIAM L.	
	<b>Examiner</b> Gloria Hale	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1-22-04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 1-20 it is not clear as to whether the apparatus is being claimed in combination with a tree stand or just for use with a tree stand. The components of the tree stand (i.e.- the brackets) are claimed in the dependent claims. There is no proper antecedent basis for the "tree stand" recited in claims 2 and 3. The tree stand has not been positively recited in the body of claim 1. If the present invention is intended to be claimed with a tree stand base it should be positively recited within the body of the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kemp (US 2,230,689).

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Kemp discloses an apparatus (1,2,3- the bag/sack) wearable while in a tree stand which is generally a tubular length of material having an open end and a closed end including a fastener (cord, 8) which performs the intended use of "for securing the apparatus to the base of the stand" as broadly claimed. (See Kemp page 2, right col. Lines 7-11\_). When rolled with cord (8) around the apparatus the tubular apparatus is securable to a tree stand as intended and claimed. The apparatus of Kemp is wearable while the user stands in a tree stand. Nothing precludes the apparatus of Kemp to be worn in a tree stand.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp (US 2,230,689) in view of Raines, Jr. et al (US 6,539,966).

Kemp discloses a tubular apparatus as broadly claimed and discussed above with a fastener, cord 8. (kemp, page 1, right col. Lines 7-11). However, Kemp does not specifically disclose a tree stand/hunting stand with a bracket. Raines discloses a well known tree/hunting stand (12) for use by a hunter and which are commonly used by a hunter and which are commonly used by hunter's to hide in and about trees to hide from game. Raines includes brackets (22,42) in figures 2 and 3, col. 3, line 53 – col. 4, line 17 which are commonly placed on

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tree stands as part of their construction. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to place or use the cord to place the rolled apparatus on the tree stand bracket to store the apparatus when not in use or needed by a user to keep warm. It is also well known to construct such ties of nylon for durability.

Claims 7-9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Anderson (US 1,915,044).

Kemp discloses the invention substantially as claimed. However, Kemp does not disclose the elastic band at the open end, a protective mat at a closed end and pockets. Anderson discloses a similar warming bag with the elastic band about the open end (7), pockets (8) and a protective mat (6). (See Anderson, figure 1 and lines 42-51).

Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Anderson as applied to claims 7-9, 12 and 13 above, and further in view of Raines(US 6,539,966).

Kemp and Anderson disclose the invention substantially as claimed with a cord fastener 8 (See Kemp, page 1, rt. Col. Lines 7-11) except for a well known tree stand structure including the claimed brackets. Raines discloses a tree/hunting stand (12) for use by a hunter and which are commonly used by hunter's to hide from game in and about trees while hunting. Raines includes brackets 22,42 in figures 2 and 3, col. 3, line 52- col. 4, line 17 which are commonly placed on tree/hunting stands as part of their construction.

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Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to place or use the cord to attach the rolled apparatus cover on the tree stand bracket to store the apparatus when not in use or needed by a user to keep warm. The cord 8 of Kemp is attachable about a tree hunting stand bracket as broadly claimed.

Claims 10,11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp in view of Hutto (US 5,630,439) or Campmor New Year 200 Catalog, page 41, Cherry Tree NYLON/POLARTEC SNOWSUIT.

Kemp discloses the invention substantially as claimed except for the claimed materials. The Examiner takes Official Notice that it is well known to construct protective, weatherproof/resistant garments and protective gear of GORETEX such as disclosed by Hutto (col. 2, line 49) to protect a wearer from wet, damp and cold weather or of Nylon and POLARTEC fleece or layered combinations of those materials to achieve the desired warmth and protection from the elements. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the protective cover of Kemp to construct it of any well known protective materials to achieve a desired level of protection such as making it of GORETEX, POLARTEC fleece and/or nylon or combinations thereof.

### ***Conclusion***

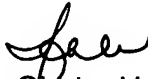
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

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